

Ratzenberger



The Comptroller General  
of the United States

Washington, D.C. 20548

**Decision**

Matter of: Major Kenneth M. Dieter - Waiver - Erroneous  
Travel Advance  
File: B-226842  
Date: June 28, 1988

**DIGEST**

Under the waiver statutes, the Comptroller General may waive claims against federal employees and service members, amounting to more than \$500, arising from overpayments of pay or allowances if collection would be against equity and good conscience. The Comptroller General and agency heads have concurrent jurisdiction to waive claims amounting to \$500 or less. Effective December 28, 1985, the waiver statutes were amended to include claims arising from erroneous payments of travel and transportation expenses. As a result of this amendment, travel advance payments are subject to waiver to the extent that expenses are incurred by an employee or service member in reliance on erroneous authorizations. Hence, under 10 U.S.C. § 2774, as amended, waiver of indebtedness may be considered in the case of a member of the Air Force who was over-advanced \$326.60 for his transfer to a new duty station, where it is shown that he received the overpayment as the result of an erroneous travel authorization and errors made in the computation of his entitlement. Since the record before us does not indicate whether the standards for waiver have been met in this particular case, the case is remanded to the Air Force for its determination of whether to grant waiver.

**DECISION**

John K. Scott, Deputy Assistant Comptroller of the Air Force for Accounting and Finance, asks our opinion as to whether an application for a waiver of indebtedness may be considered in the case of Major Kenneth M. Dieter, who was advanced \$326.60 in excess of his entitlement to travel allowances for his transfer to a new duty station. We conclude that, under the terms of the waiver statute now in effect and the conditions described below, the Air Force may waive the claim against Major Dieter for the collection of part of that amount, provided it determines

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that he was without fault in the matter and that collection would be against equity and good conscience.

#### BACKGROUND

Prior to his transfer from the University of Texas, Austin, Texas, to the United States Air Force Academy, Colorado Springs, Colorado, in August 1986, Major Dieter received a travel advance of \$1,296.50 to apply against expenses to be incurred in performing his official change of station. After his arrival at the Air Force Academy, final settlement of his travel voucher revealed that Major Dieter had been over-advanced \$326.60 for per diem and mileage for himself and travel allowances for his dependents. The discrepancies determined during this reconciliation showed that the advance was excessive because mileage payments were based on a distance of 883 miles between the two duty stations rather than the official mileage of 875 miles. This error in mileage authorized the member 3 travel days instead of 2.1/ The member was also over-advanced funds for his dependents at the 100 percent rate rather than the 75 percent rate for his wife and 50 percent rate for each child. Major Dieter does not dispute the computation of the excessive travel advance.

Major Dieter requests waiver of repayment of the \$326.60 erroneously advanced travel funds. The Air Force has forwarded his request for our opinion as to whether waiver consideration is appropriate in the circumstances of this case, in light of the amendments to the waiver statute made by Public Law 99-224 in 1985.

#### DISCUSSION

The Comptroller General and the heads of federal agencies have concurrent authority, as granted by 5 U.S.C. § 5584, 32 U.S.C. § 3716, and 10 U.S.C. § 2774, to waive a federal employee's or service member's liability for overpayments of up to \$500 of pay or allowances where collection would

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1/ The regulation in effect at the time Major Dieter's travel was performed, paragraph M1050-2, Volume 1 of the Joint Travel Regulations provided that 1 day of travel time will be allowed for each 350 miles of the official distance of the ordered travel when performed by privately owned conveyance. One additional day of travel is allowed in excess of multiples of 350 miles provided the excess is 176 miles or more. Since in this case the official distance is 875 miles, only 2 days of travel time were allowable.

be "against equity and good conscience and not in the best interests of the United States," and there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of any person having an interest in obtaining a waiver of the claim. Under amendments to 5 U.S.C. § 5584, 32 U.S.C. § 3716, and 10 U.S.C. § 2774 enacted by Public Law 99-224, approved December 28, 1985, 99 Stat. 1741, this waiver authority was extended to erroneous payments of travel and transportation expenses.<sup>2/</sup>

In the legislative history of Public Law 99-224, at House Report No. 102, 99th Cong., 1st Sess. 2, reprinted in 1985 U.S. Code Cong. & Ad. News 2659, 2660, it was stated that:

". . . GAO's experience demonstrates that hardship has been caused in many travel, transportation and relocation cases and that employees have been required to make substantial refunds to the Government as a result of circumstances which were not their fault. This is particularly true when, as the General Accounting Office has found, many of these claims arise from erroneous agency authorizations which an employee relies on in good faith to his detriment."

We believe that the situation of expenses incurred as the result of an erroneous travel advance fits this description to the extent that the travel advance was made to cover the expenses erroneously authorized and the employee actually spent the advance in reliance on the duly authorized, albeit erroneous, travel orders.<sup>3/</sup> However, waiver is only appropriate to the extent that an employee is indebted to the government for repayment of the amount advanced after

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2/ The amendments made by Public Law 99-224 to the civilian employee waiver statute, 5 U.S.C. § 5584, use the term "travel, transportation and relocation expenses and allowances," whereas the amendments to the two waiver statutes for the members of the uniform services, 10 U.S.C. § 2774 and 32 U.S.C. § 716, use the term "travel and transportation allowances." Although the terminology differs, no difference in the scope of the coverage was intended.

3/ It should be emphasized that an erroneous travel advance is appropriate for waiver consideration only when the employee expends the money. The travel advance would still be considered merely a loan to the employee to the extent that no expenditures or expenditures not in accordance with those authorized by the travel order are incurred.

the advance has been applied against the legitimate expenses. See our companion case decided today, Rajindar N. Khanna, B-225263. In this case, after Major Dieter's legitimate expenses are applied against the advance, there remains a balance of \$326.60 owed by him. It is that amount which is appropriate for waiver consideration.

Therefore, we consider the travel advance payment which Major Dieter received to be erroneous and subject to waiver to the extent that it was made to cover the expenses erroneously authorized and incurred by Major Dieter in detrimental reliance on the erroneous orders. However, since the amount of the debt is less than \$500 and the record before us is insufficient to enable us to determine whether the standards for waiver are met in Major Dieter's case, we are returning his waiver application to the Air Force for further consideration. Waiver may be allowed if it is determined that collection would be "against equity and good conscience," and that there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of Major Dieter or any other person having an interest in obtaining a waiver of the claim.

Further, waiver consideration should be consistent with the standards for travel advances we have provided here. As a general rule we would presume that expenses incurred in accordance with erroneous orders were made in reliance on those orders. However, under certain circumstances we believe it would be inappropriate to assume detrimental reliance. For example, with regard to the mileage payments based on the inaccurate distance, it could not be said that Major Dieter relied on this error to his detriment since he was going to drive the distance regardless of the specific mileage allowed. Similarly, with regard to the overpayment for travel allowances for Major Dieter's dependents, there is no evidence in the record before us that Major Dieter expended additional funds in reliance on the erroneous authorization. Therefore, the amount of Major Dieter's expenses relating to the mileage and dependents' allowance overpayments would not appear to be appropriate for waiver allowance.

Major Dieter did, however, rely on the erroneous authorization of 3 days per diem since he took the extra day and it is assumed he would not have done so if only 2 days had been authorized. Therefore, the amount Major Dieter expended for the extra day of per diem would appear to be appropriate for waiver allowance.

Therefore, the claim of Major Dieter for waiver is remanded to the Air Force for its determination in accordance with the foregoing.

*Milton L. Auster*  
for Comptroller General  
of the United States